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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RICHARD ALLEN CUEVAS,
12 Petitioner,
13 vs.
14 ROBERT HERNANDEZ, Warden, et al.,
15 Respondents.
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Civil No. 08cv0647 J (NLS)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

17 Petitioner, Richard Cuevas, a state prisoner proceeding pro se, has filed a Petition for Writ
18 of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Court finds this case is summarily
19 dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

20 **PETITION BARRED BY GATEKEEPER PROVISION**

21 The instant Petition is not the first Petition for a Writ of Habeas Corpus that Petitioner
22 has submitted to this Court challenging his July 30, 2001 conviction in San Diego Superior Court
23 Case No. SCD154691. On January 17, 2003, Petitioner filed in this Court a Petition for Writ of
24 Habeas Corpus in case number 03cv0114 W (BEN). In that petition, Petitioner challenged his
25 conviction in San Diego Superior Court Case No. SCD154691 as well. On September 11, 2003,
26 this Court denied the petition on the merits. (See Order filed Sept. 11, 2003 in case No.
27 03cv0114 W (BEN) [Doc. No. 12].) Petitioner did not appeal that determination.

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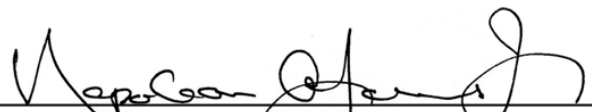
1 Petitioner is now seeking to challenge the same conviction he challenged in his prior
2 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the
3 appropriate court of appeals authorizing the district court to consider a successive petition, the
4 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no
5 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive
6 petition.

7 **CONCLUSION**

8 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
9 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
10 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
11 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. **For**
12 **Petitioner's convenience, the Clerk of Court shall attach to this Order, a blank Ninth**
13 **Circuit Application for Leave to File Second or Successive Petition.**

14 **IT IS SO ORDERED.**

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16 DATED: April 18, 2008

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18 HON. NAPOLEON A. JONES, JR.
19 United States District Judge
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